

National Labor Relations Board

§ 101.18

specified above, may issue and serve on the parties a notice of hearing only, without a specification. Such notice contains, in addition to the time and place of hearing before an administrative law judge, a brief statement of the matters in controversy.

(c) The procedure before the administrative law judge or the Board, whether initiated by the “backpay specification” or by notice of hearing without backpay specification, is substantially the same as that described in §§ 101.10 to 101.14, inclusive.

Subpart C—Representation Cases Under Section 9(c) of the Act and Petitions for Clarification of Bargaining Units and for Amendment of Certifications Under Section 9(b) of the Act

§ 101.17 Initiation of representation cases and petitions for clarification and amendment.

The investigation of the question as to whether a union represents a majority of an appropriate grouping of employees is initiated by the filing of a petition by any person or labor organization acting on behalf of a substantial number of employees or by an employer when one or more individuals or labor organizations present a claim to be recognized as the exclusive bargaining representative. If there is a certified or currently recognized representative, any employee, or group of employees, or any individual or labor organization acting in their behalf may also file decertification petitions to test the question of whether the certified or recognized agent is still the representative of the employees. If there is a certified or currently recognized representative of a bargaining unit and there is no question concerning representation, a party may file a petition for clarification of the bargaining unit. If there is a unit covered by a certification and there is no question concerning representation, any party may file a petition for amendment to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or loca-

tion of the employer involved. The petition must be in writing and signed, and either must be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his or her knowledge and belief. It is filed with the Regional Director for the Region in which the proposed or actual bargaining unit exists. Petition forms, which are supplied by the Regional Office upon request, provide, among other things, for a description of the contemplated or existing appropriate bargaining unit, the approximate number of employees involved, and the names of all labor organizations which claim to represent the employees. If a petition is filed by a labor organization seeking certification, or in the case of a petition to decertify a certified or recognized bargaining agent, the petitioner must supply, within 48 hours after filing but in no event later than the last day on which the petition might timely be filed, evidence of representation. Such evidence is usually in the form of cards, which must be dated, authorizing the labor organization to represent the employees or authorizing the petitioner to file a decertification petition. If a petition is filed by an employer, the petitioner must supply, within 48 hours after filing, proof of demand for recognition by the labor organization named in the petition and, in the event the labor organization named is the incumbent representative of the unit involved, a statement of the objective considerations demonstrating reasonable grounds for believing that the labor organization has lost its majority status.

§ 101.18 Investigation of petition.

(a) Upon receipt of the petition in the Regional Office, it is docketed and assigned to a member of the staff, usually a field examiner, for investigation. The field examiner conducts an investigation to ascertain (1) whether the employer’s operations affect commerce within the meaning of the Act, (2) the appropriateness of the unit of employees for the purposes of collective bargaining and the existence of a bona fide question concerning representation within the meaning of the Act, (3)

whether the election would effectuate the policies of the Act and reflect the free choice of employees in the appropriate unit, and (4) whether, if the petitioner is a labor organization seeking recognition, there is a sufficient probability, based on the evidence of representation of the petitioner, that the employees have selected it to represent them. The evidence of representation submitted by the petitioning labor organization or by the person seeking decertification is ordinarily checked to determine the number or proportion of employees who have designated the petitioner, it being the Board's administrative experience that in the absence of special factors the conduct of an election serves no purpose under the statute unless the petitioner has been designated by at least 30 percent of the employees. However, in the case of a petition by an employer, no proof of representation on the part of the labor organization claiming a majority is required and the Regional Director proceeds with the case if other factors require it unless the labor organization withdraws its claim to majority representation. The field examiner, or other member of the staff, attempts to ascertain from all interested parties whether or not the grouping or unit of employees described in the petition constitutes an appropriate bargaining unit. The petition may be amended at any time prior to hearing and may be amended during the hearing in the discretion of the hearing officer upon such terms as he or she deems just.

(b) The petitioner may on its own initiative request the withdrawal of the petition if the investigation discloses that no question of representation exists within the meaning of the statute, because, among other possible reasons, the unit is not appropriate, or a written contract precludes further investigation at that time, or where the petitioner is a labor organization or a person seeking decertification and the showing of representation among the employees is insufficient to warrant an election under the 30-percent principle stated in paragraph (a) of this section.

(c) For the same or similar reasons the Regional Director may request the petitioner to withdraw its petition. If the petitioner, despite the Regional Di-

rector's recommendations, refuses to withdraw the petition, the Regional Director then dismisses the petition, stating the grounds for dismissal and informing the petitioner of its right of appeal to the Board in Washington, DC. The petition may also be dismissed in the discretion of the Regional Director if the petitioner fails to make available necessary facts which are in its possession. The petitioner may within 14 days appeal from the Regional Director's dismissal by filing such request with the Board in Washington, DC; after a full review of the file with the assistance of its staff, the Board may sustain the dismissal, stating the grounds of its affirmance, or may direct the Regional Director to take further action.

§ 101.19 Consent adjustments before formal hearing.

The Board has devised and makes available to the parties three types of informal consent procedures through which representation issues can be resolved without recourse to formal procedures. These informal arrangements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent agreement, in which the parties agree that all pre- and postelection disputes will be resolved with finality by the Regional Director. Forms for use in these informal procedures are available in the Regional Offices.

(a)(1) The consent-election agreement followed by the Regional Director's determination of representatives is one method of informal adjustment of representation cases. The terms of the agreement providing for this form of adjustment are set forth in printed forms, which are available upon request at the Board's Regional Offices. Under these terms the parties agree with respect to the appropriate unit, the payroll period to be used as the basis of eligibility to vote in an election, and the place, date, and hours of balloting. A Board agent arranges the details incident to the mechanics and conduct of the election. For example, the Board agent usually arranges preelection conferences in which the